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INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME

IMPLEMENTATION OF THE NAPLES POLITICAL DECLARATION AND GLOBAL ACTION PLAN AGAINST ORGANIZED TRANSNATIONAL CRIME

QUESTION OF THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME

Report of the Secretary-General

The Secretary-General has the honour to submit to the Commission on Crime Prevention and Criminal Justice the report on the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996 (see annex).

*E/CN.15/1997/1.

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Annex

REPORT ON THE INTERGOVERNMENTAL EXPERT GROUP MEETING ON EXTRADITION, HELD AT SIRACUSA, ITALY, FROM 10 TO 13 DECEMBER 1996

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I. RECOMMENDATIONS

1. The Intergovernmental Expert Group Meeting on Extradition recommends to the Commission on Crime Prevention and Criminal Justice, at its sixth session, the consideration of the following draft resolution:

DRAFT RESOLUTION

International cooperation in criminal matters

The Commission on Crime Prevention and Criminal Justice,

Acknowledging the benefits of the enactment of national laws providing the most flexible basis for extradition, and bearing in mind that developing countries and countries with economies in transition may lack the resources for developing and implementing treaty relations in extradition, as well as appropriate national legislation,

Bearing in mind that the United Nations model treaties on international cooperation in criminal matters provide important tools for the development of international cooperation,

Recalling the Model Treaty on Extradition adopted by the General Assembly in its resolution 45/116 of 14 December 1990 and annexed thereto,

Recalling also Economic and Social Council resolution 1995/27 of 24 July 1995,

Commending the International Association of Penal Law and the International Institute of Higher Studies in Criminal Sciences for providing support for the convening of the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996; as well as the Governments of Finland, Germany and the United States of America and the United Nations Interregional Crime and Justice Research Institute for their cooperation in the organization of the meeting,

1. *Welcomes* the report of the Secretary-General on the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996;[1]

2. *Recommends* that consideration should be given to consolidating the various model treaties in order to develop a comprehensive international cooperation instrument, and requests the Secretary-General, in consultation with Member States and, as appropriate, with intergovernmental and other organizations, to submit to the Commission proposals for the development of such an instrument to be based on the Model Treaty on Extradition, the Model Treaty on Mutual Assistance in Criminal Matters,[2] the Model Treaty on Transfer of Proceedings in Criminal Matters,[3] the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released[4] and the

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[1]E/CN.15/1997/6.
[2]Resolution 45/117, annex.
[3]Resolution 45/118 , annex.
[4]Resolution 45/119, annex.

Model Agreement on the Transfer of Foreign Prisoners,[5] drawing also on current developments at other intergovernmental levels;

3. *Decides* that the Model Treaty on Extradition should be complemented by the provisions set forth in annex I to the present resolution;

4. *Requests* the Secretary-General to elaborate, in consultation with Member States, for submission to the Commission, model legislation to assist Member States in giving effect to the Model Treaty on Extradition, in order to enhance effective cooperation between States, taking into account the elements contained in annex II to the present resolution;

5. *Urges* States to consider taking steps, where appropriate, to combat transnational organized crime by adopting extradition and surrender or transfer agreements to ensure that fugitives are denied safe havens;

6. *Urges* States to modernize bilateral and multilateral law enforcement cooperation arrangements as an integral part of the effort to effectively combat constantly changing methods of individuals and groups engaging in organized transnational crime;

7. *Urges* Member States to use the Model Treaty on Extradition as a basis in developing treaty relations at the bilateral, regional or multilateral level, as appropriate;

8. *Encourages* Member States, where appropriate, to enact effective extradition legislation, and calls upon the international community to give all possible assistance in achieving that goal;

9. *Urges* Member States to continue to acknowledge that the protection of human rights should not be considered as inconsistent with effective international cooperation in criminal matters, as adherence to the rule of law and respect for human rights result in more effective cooperation;

10. *Urges* Member States to acknowledge that the diversity of legal systems and the lack of uniformity of procedures do not, per se, constitute a bar to the protection of universally recognized human rights;

11. *Invites* Member States to consider, where applicable, the following measures in the context of the use and application of extradition treaties or other arrangements:

(a) Establishing and designating a national central authority to process requests for extradition;

(b) Undertaking periodic reviews of their treaty or other extradition arrangements and implementing legislation for the purpose of rendering them more efficient and effective in combating new and complex forms of crime;

(c) Simplifying and streamlining procedures necessary to execute and initiate requests for extradition, including the provision to requested States of information sufficient to enable extradition;

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[5]See *Seventh United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

(d) Reducing the technical requirements, including documentation, necessary to satisfy the tests for extradition, where a person is accused of an offence;

(e) Providing for extraditable offences to extend to all acts and omissions that would be a criminal offence in both States carrying a prescribed minimum penalty, and not to be individually listed in treaties or other agreements;

(f) Paying adequate attention, when considering and enacting the measures mentioned in subparagraphs (b) to (e) above, to furthering the protection of human rights and the maintenance of the rule of law;

12. *Encourages* Member States to promote, on a bilateral, regional or worldwide basis, techniques for upgrading of skills that will facilitate extradition, such as specialized training and, whenever possible, secondment and exchanges of personnel, as well as posting in other States of representatives of prosecuting agencies or of judicial authorities;

13. *Reiterates* its invitation to Member States to provide to the Secretary-General copies of relevant laws and information on practices related to international cooperation in criminal matters and in particular to extradition, as well as updated information on central authorities designated to deal with requests;

14. *Requests* the Secretary-General:

(a) To regularly update and disseminate the information mentioned in paragraph 13 above;

(b) To continue to provide advisory and technical cooperation services to Member States requesting assistance in the development, negotiation and implementation of bilateral, subregional, regional or international treaties on extradition, as well as the formulation and application of appropriate national legislation;

(c) To promote regular communication and exchanges of information between central authorities of Member States dealing with requests for extradition and to coordinate periodic meetings of such authorities, or to promote such meetings on a regional basis for Member States wishing to attend;

(d) To provide, taking into account the guidelines contained in annex III to the present resolution, in cooperation with relevant intergovernmental organizations, training for personnel in appropriate governmental agencies and central authorities of requesting Member States on extradition law and practice designed to develop necessary skills and improve communications and cooperation aimed at enhancing the effectiveness of extradition and related practice;

15. *Also requests* the Secretary-General, in cooperation with other relevant intergovernmental organizations, the United Nations Interregional Crime and Justice Research Institute and the affiliated and associated institutes, to develop appropriate training materials for use in providing to requesting Member States the technical assistance referred to above;

16. *Commends* the International Institute of Higher Studies in Criminal Sciences for its offer to organize and host a coordination meeting of intergovernmental organizations and institutes for the purpose of developing the training material referred to in paragraph 15 above, as well as training courses on extradition law and practice;

17. *Requests* the Secretary-General to fully implement the provisions of the present resolution, and urges Member States and funding agencies to assist the Secretary-General in implementing the present resolution through voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund;

18. *Requests* the Secretary-General to submit the report on the Intergovernmental Expert Group Meeting on Extradition, together with the present resolution, to the Preparatory Committee on the Establishment of an International Criminal Court, and invites the Preparatory Committee to take it into consideration in its deliberations on relevant issues, together with the United Nations model treaties on international cooperation in criminal matters.

ANNEX I

Complementary provisions for the Model Treaty on Extradition

Article 3

1. Move footnote 9 into the text of paragraph (a) at the end of the existing paragraph.

2. Add new footnote to paragraph (a): "Countries may wish to exclude certain conducts, e.g. acts of violence, from the concept of political offence".

3. Add to footnote 10 to paragraph (e): "Countries may also wish to restrict consideration of the issue of lapse of time to the law of the requesting State only or to provide that acts of interruption in the requesting State should be recognized in the requested State".

Article 4

1. Add footnote to paragraph 2 (a): "As a first step to reducing the incidents of refusal of extradition on the basis of nationality, countries could consider provisions that would permit such surrender for serious offences, or permit temporary transfer of the person for trial and return of the person to the requested State for service of sentence, or otherwise ensure that the denial of extradition on the basis of nationality does not result in impunity".

2. Add to paragraph (d) the same *aut dedere aut judicare* provisions as are found in paragraphs (a) and (f).

Article 5

1. Replace the existing footnote 14 to paragraph 2 (b) with the following: "Countries requiring evidence in support of a request for extradition may wish to define the evidentiary requirements necessary to satisfy the test for extradition, taking into account the need to keep these requirements to a minimum".

2. Add a new footnote to article 5: "Countries may wish to consider including the most advanced techniques for the communication of requests, means which could nonetheless establish the authenticity of the documents as emanating from the requesting State".

Article 6

Add a footnote to article 6: "Countries may wish to provide for the waiver of speciality in the case of simplified extradition".

Article 14

1. Eliminate footnote 16 to paragraph 1 (b).

2. Add a new footnote to paragraph 1 (a): "Countries may also wish to provide that the rule of speciality is not applicable to extraditable offences provable on the same facts, and carrying the same or a lesser penalty as the original offence for which extradition was requested".

3. Add a footnote to paragraph 2: "Countries may wish to waive the requirement for the provision of some or all of these documents".

Article 15

Add to footnote 18 to paragraph 2: "However, countries may wish to provide that transit should not be denied on the basis of nationality".

Article 17

Add to footnote 19 to paragraph 2: "There may also be cases for consultations between the requesting and requested States for the payment by the requesting State of extraordinary costs, particularly in complex cases where there is a significant disparity in the resources available to the two States".

ANNEX II

Recommended contents of model legislation

A. General recommendation

1. The model legislation should replicate in statutory terms tne general provisions of the Model Treaty on Extradition, in accordance with the recommendations contained in annex I above.

B. Scope

2. The model legislation should provide a full range of flexible options for assuming extradition obligations multilaterally, bilaterally, as well as without treaty on the basis of domestic legislation, with or without reciprocity. Where there is a bilateral extradition treaty, that treaty should govern the relationship. Consideration could also be given to provisions that would allow for extradition or surrender to non-State entities, such as international tribunals. The model legislation could also provide for a mechanism to transfer a national of the requested State to a requesting State for trial and to retransfer the person for service of any sentence.

C. Jurisdiction

3. The model legislation should:

(a) Create and confer jurisdiction in relation to cases where the State declines to extradite on the basis of nationality or the death penalty, and/or to transfer the proceedings from the requesting State to the requested State;

(b) Provide for the enforcement of a sentence in the requested State in the case of a convicted person, where extradition is refused on the basis of nationality, the death penalty or concurrent jurisdiction.

D. Procedure

4. The model legislation should include options for procedures dealing with extradition requests and the fugitive in the requested State. Such procedures should be in conformity with, whenever applicable, international and regional human rights instruments. The model legislation should also define the evidentiary requirements necessary to satisfy the tests for extradition, taking into account the need to keep such requirements to a minimum.

E. Mutual assistance

5. The model legislation should provide a mechanism for mutual assistance in the context of extradition requests, trial in the requested State, temporary transfer or transfer of proceedings, in accordance with relevant United Nations model treaties and recommendations.

F. Communications

6. The model legislation should create a central authority for the receipt and transmission of requests and the provision of advice and assistance to relevant authorities.

ANNEX III

Recommendations for training programme

1. The training programme will be an essential element for developing technical cooperation in order to enhance the mechanism of extradition. The programme will serve two functions: first, to improve cooperation, communication and exchange of information and material among intergovernmental organizations in the area of extradition; second, to provide extradition training for professional officers in ministries of foreign affairs, ministries of justice and other relevant governmental agencies that work in the area of extradition.

A. Intergovernmental organizational meeting

2. *Objectives.* The aims of the intergovernmental meeting will be to exchange information and discuss policies and programmes for training in extradition law and practice. A result of the meeting may also be the organization of additional training sessions.

3. *Participation.* The meeting will be attended by participants from United Nations Secretariat units, United Nations bodies, research institutes and other relevant organizations in the United Nations

system, including the following: Crime Prevention and Criminal Justice Division of the Secretariat, United Nations Centre for Human Rights, Office of the United Nations High Commissioner for Refugees, United Nations International Drug Control Programme, United Nations Interregional Crime and Justice Research Institute, and institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network. Participants from the following intergovernmental organizations will also attend: Afro-Asian Legal Consultative Committee, *Agence de coopération culturelle et technique* (Agency for Cultural and Technical Cooperation), Commonwealth Secretariat, Council of Europe, Council of Ministers of the European Union, Economic Community of West African States, European Commission, International Criminal Police Organization, Organization of African Unity, Organization of American States and Southern African Development Community.

4. *Documentation.* A complete set of extradition and mutual assistance materials from each of the above-mentioned organizations should be sent to the International Institute of Higher Studies in Criminal Sciences, which will act as a repository. The Institute will provide the participants with those materials for the training programme described below.

5. *Duration.* The meeting will last three days, and will be held at the International Institute of Higher Studies in Criminal Sciences at Siracusa, Italy, in 1997.

6. *Costs.* Residence costs for the participants will be covered by the Institute. Each organization will cover the travel expenses of its representatives.

B. Training programme

7. *Objectives.* The programme will aim at furthering technical knowledge on extradition law and practice for professional officers in ministries of foreign affairs, ministries of justice and other relevant governmental agencies in developing countries and countries with economies in transition working in the area of extradition. Officials from developed countries that will cover their travel and residence costs will also be invited to participate. The purpose of the programme is to improve knowledge of extradition law and practices, as well as the enhancement of the capabilities of the criminal justice system in dealing with extradition and penal matters. The programme is also designed to improve skills and emphasize cross-legal and cross-cultural approaches in order to develop better understanding of the diversity of legal systems.

8. *Organizers.* The Crime Prevention and Criminal Justice Division, the International Institute of Higher Studies in Criminal Sciences and other interested organizations will organize the programme.

9. *Number of events.* There will be two training seminars.

10. *Participants.* Each seminar will have 40 participants who will represent different legal systems, emphasizing geographical distribution in order to improve cross-cultural experiences.

11. *Languages.* One seminar will be held in English and French, and the second will be held in English, French and Spanish with simultaneous interpretation.

12. *Length of programme.* Each session will last one week. Participants arrive at the weekend and depart on the following weekend, in order to benefit from reduced air fares. It should be noted that, optimally, the training should last two weeks, and that, costs permitting, the programme will be extended.

13. *Functional approach.* The approach to the training programme will combine the traditional lecture and discussion model with the case-study model. The focus of the training programme will be on operational personnel involved in extradition. The seminars will have two components:

(a) Training in the substantive knowledge of extradition law and practice in an international and comparative legal context;

(b) Training in enhancing skills involved in the practice of extradition. Instructors will be selected by the organizers, who will seek recommendations from the members of the Intergovernmental Expert Group Meeting.

14. *Documentation.* Documentation will be prepared by the organizers. It will include:

(a) Pre-seminar documentation:

(i) International, intergovernmental and regional organizations contributing documents and materials for the participants should endeavour to provide translations of the documents in the languages of the seminar;

(ii) The various documents necessary for each lecture should be prepared by the instructors with assistance from the participating organizations;

(iii) The Council of Europe "Blue Book" of extradition, consisting of the "European Convention on Extradition: a guide to procedure"[6] and the "Draft European Comprehensive Convention on International Cooperation in Criminal Matters", [7]

(b) Post-seminar documentation:

(i) Training manuals will be produced drawing upon the conclusions of the seminar and made available worldwide through the various participating organizations and electronically. The manuals could be prepared for three target groups: one for police, one for prosecutorial personnel and one for judiciary and magistrate personnel;

(ii) Along with the training manuals, other audio and visual aids could be produced to facilitate domestic training efforts.

15. *Costs.* The International Institute of Higher Studies in Criminal Sciences will cover the following costs: residence for the participants; travel and residence for the lecturers; local transportation; organizational expenses and facilities; simultaneous interpretation; and educational material. Travel expenses for the participants should be borne by their governments. The Division and the Institute will seek funding from donor Governments and funding agencies to assist Governments that are unable to sustain such expenses.

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[6]Council of Europe document PC-OC/Inf. (96) 4.
[7]Council of Europe document PC-OC/Inf. (96) 13.

II. BACKGROUND

2. The Intergovernmental Expert Group Meeting on Extradition was convened by the Secretary-General in response to a request by the Economic and Social Council in its resolution 1995/27. According to that resolution, the Expert Group was to examine practical proposals for the further development and promotion of mechanisms of international cooperation, including the United Nations model treaties on international cooperation in criminal matters, as well as for the development of model legislation on extradition and related forms of international cooperation in criminal matters. The Council also recommended that the Expert Group should explore ways and means of increasing the efficiency of extradition and related mechanisms of international cooperation in criminal matters, having due regard to the rule of law and the protection of human rights, including, where appropriate, such measures as:

(a) The provision of technical assistance in the development of bilateral and multilateral agreements based on the United Nations model treaties and other sources;

(b) The drafting of model legislation or agreements on international cooperation in criminal matters, alternative or complementary articles for existing model treaties and articles for possible model multilateral instruments.

3. The subject of extradition was dealt with in a workshop organized at the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995. The workshop covered specific problems in the implementation of extradition treaties and methods of overcoming those problems.

III. ORGANIZATION OF THE INTERGOVERNMENTAL EXPERT GROUP MEETING

A. Opening of the Intergovernmental Expert Group Meeting

4. The Intergovernmental Expert Group Meeting on Extradition was held at Siracusa, Italy, from 10 to 13 December 1996. The Meeting was hosted by the International Institute of Higher studies in Criminal Sciences and the International Association of Penal Law. The Crime Prevention and Criminal Justice Division of the Secretariat served as secretariat of the Meeting.

5. At the opening meeting, statements were made by the President of the International Institute of Higher Studies in Criminal Sciences and by a member of the Division. A representative of the Government of Italy conveyed to the participants a message from the Minister of Foreign Affairs, who encouraged the Expert Group to concentrate on recommending practical solutions to problems related to extradition practice, which were high on the list of priorities of the international community. Italy was actively involved in promoting international cooperation in criminal matters through the United Nations. In that context, reference was made to the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994, and to the action taken to implement the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748) by the Commission on Crime Prevention and Criminal Justice and by the General Assembly, which, in its resolution 51/120, had dealt with the question of the elaboration of an international convention against organized transnational crime. It was also noted that the Government of Italy had offered to host in 1998 a plenipotentiary conference on the establishment of an international criminal court.

B. Attendance

6. The Meeting was attended by experts appointed by the Governments of 23 countries and by observers from two bodies of the United Nations, from an associated institute and from three intergovernmental organizations (see appendix).

C. Election of officers

7. M. Cherif Bassiouni, President of the International Institute of Higher Studies in Criminal Sciences and of the International Association of Penal Law, was elected as chairman of the Meeting, and Kimberly Prost (Canada) as Rapporteur.

D. Adoption of the agenda

8. The Expert Group adopted the following agenda:

1. Opening of the Meeting and adoption of the agenda and organization of work.

2. Introduction to common problems in extradition law and practice and potential solutions.

3. General discussion on common problems in extradition law and potential solutions.

4. Facilitating treaty practice; special agreements; representation of the requesting State; channels of communication; urgent requests; and identification of, and recommendations to improve, extradition practice.

5. Extradition of nationals; jurisdiction.

6. Problems of double criminality with particular reference to complex crimes and organized crime.

7. Reciprocity, comity and national legislation as a basis for extradition.

8. The rule of specialty.

9. Lapse of time; immunity from prosecution and human rights issues; and political offence exception.

10. Model legislation, alternative or complementary articles of the Model Treaty on Extradition and articles for possible model multilateral agreements.

11. Training and technical assistance mechanisms and materials to improve the level of extradition practice.

12. Summary of conclusions and recommendations of the Intergovernmental Expert Group Meeting; and adoption of the report to be submitted to the Commission on Crime Prevention and Criminal Justice at its sixth session.

13. Closure of the Meeting.

E. Closure of the Intergovernmental Expert Group Meeting

9. In a closing statement, the Officer-in-Charge of the Division informed the participants that the Minister of Justice of Italy, in a message addressed to the organizers of the Meeting, had expressed his satisfaction with the results achieved, and had reiterated the commitment of the Government of Italy to support the activities of the international community, particularly through the United Nations, in the field of crime prevention and criminal justice.

IV. SUMMARY OF THE DISCUSSION

10. The Expert Group surveyed the problems encountered in extradition practice, drawing on a concept paper prepared by the Division. It was emphasized that international cooperation in criminal matters had often been approached in a compartmentalized manner, which entailed a number of dangers and impeded efficiency and effectiveness, particularly in the face of more sophisticated and complex forms of crime, which were on the increase. There was an urgent need to develop a comprehensive strategy to combat crime in all its forms and to gear instruments of international cooperation towards achieving that strategy. For that purpose, modalities of international cooperation, such as extradition, should be regarded as tools and be rendered complementary to each other.

11. Moreover, it was stressed that deficiencies in extradition practice increased the likelihood of Governments relying on other methods to achieve the desired results, such as expulsion or use of immigration laws and procedures. Those methods did not always provide adequate safeguards of the rights of the individual. The Expert Group agreed that effective action against crime and protection of human rights should not be viewed as mutually exclusive or conflicting values. On the contrary, the international community had repeatedly highlighted the complementarity of effective international cooperation in criminal matters and the protection of individual rights and liberties, as evidenced by the work of the United Nations Crime Prevention and Criminal Justice Programme.

12. There was a general discussion which provided an overview of various problems in extradition practice, divided into general categories of issues - administrative, legal and technical, as well as policy and political concerns. Several key areas of concern were identified, including clarity of procedures, dual criminality, especially in relation to complex crimes, the political offence exception in a modern context, problems relating to the rule of speciality, conflicting claims of jurisdiction, non-extradition of nationals and differences in evidentiary standards and burdens.

13. Improving the effectiveness of extradition practice, with due regard to the rule of law and protection of human rights, could be achieved by raising the professional standards and competence of officials involved in the extradition process, including central authorities, police, prosecutors and judges, especially in developing countries and countries with economies in transition. The Expert Group agreed that there was a need for the provision of technical assistance in the form of training and advisory services to help requesting States to attain higher levels of professionalism, but also to conclude extradition agreements or elaborate extradition legislation effectively. The role of the Division in this regard was emphasized. In addition to providing training, the Division could make available to requesting States experts on extradition matters, who could act as resource persons to those States and provide appropriate advice.

14. There was a general discussion about treaty practice in extradition. It was noted that the use of treaties, bilaterally, regionally and multilaterally, had several benefits, such as certainty of requirements and clear obligations. At the same time, it was noted that consideration should also be given to extradition without treaty, on the basis of domestic legislation and comity.

15. A consideration of current practice indicated that many countries continued to rely mostly on bilateral extradition agreements, as these could be tailored to the particular needs and problems of the individual States. In that respect, it was noted that the Division could provide assistance to countries in the development of bilateral treaty relations by, for example, providing training in negotiation techniques and skills, as well as acting as a resource for countries through projects, such as the current project for the development of a database of existing bilateral extradition treaties.

16. At the same time, recent experience had demonstrated that regional and subregional extradition agreements and arrangements had the advantage of cost-effectiveness, particularly for smaller countries, developing countries or countries with economies in transition, and that such agreements were also both possible and effective, in spite of differences in the legal systems of the countries concerned. Several examples of such successful regional schemes were provided.

17. The Expert Group considered procedural issues relating to extradition, specifically urgent requests, provisional arrest, waiver, representation of requesting States and channels of communication. Several experts noted that in any process for provisional arrest and waiver, it was necessary to achieve an appropriate balance between ensuring the availability of the person for surrender and protecting individual rights. Treaty articles and legislative provisions reflecting that balance could be considered for inclusion as complementary articles for the model treaty and proposed model law.

18. Representation of the requesting State was identified as an area where there was a need for training and technical assistance projects. In particular, while there was general agreement that the position of the requesting State should be fully and accurately presented before the relevant court and authorities in the requested State, there could be significant problems for the latter in that respect, particularly for smaller countries, developing countries or countries with economies in transition, which lacked sufficient resources to provide for full and adequate representation of the requesting State.

19. Several experts noted that in order for the international community to "keep up" with the criminal elements operating nationally and internationally, the speed and efficiency of means and channels of communication between States, with respect to international cooperation, had to be enhanced. The use of direct communications between ministries of justice and through the International Criminal Police Organization (ICPO/Interpol), as well as the importance of the establishment by States of central authorities for the processing of extradition and mutual assistance requests, staffed with individuals who could provide advice on facilitating such requests, were among the suggestions made to respond to that problem. The Expert Group also discussed the use of the ICPO/Interpol "red notice" in locating suspects and in carrying out provisional arrests.

20. The Expert Group considered at length the problems surrounding the non-extradition of nationals. Several experts identified the non-extradition of nationals as a significant impediment to bringing individuals to justice, particularly in the context of transnational organized crime. It was noted that many of the original rationales for the non-extradition of nationals were of questionable validity today. For example, the assumption that nationals would be discriminated against or not receive a fair trial outside their national State might no longer be valid, given the progress that had been made in advancing the protection of human rights within justice systems.

21. It was noted that use of the principle *aut dedere aut judicare* would in theory be an alternative to the extradition of nationals, and had on some occasions proved effective. There were, however, several significant practical problems in its application, including the low priority assigned to such prosecutions by overburdened requested States. The difficulty and costs of obtaining evidence from the requesting State, including the travel costs to the requested State, and the serious burdens imposed by such trials on the victims, witnesses and other persons, were cited as examples. Such problems significantly impeded the effectiveness of that alternative to extradition. At the same time, several experts noted that many States faced serious constitutional, legal and practical problems in allowing for the extradition of nationals, so that it was not realistic to expect the abolition of that ground for refusal in the near future.

22. Most of the experts agreed that, in the long term, States should work towards the elimination of the ground for refusal on the basis of nationality, and, in the interim, should develop alternative measures to ensure that nationals would not escape justice. Some States that previously did not extradite nationals had reversed that position in whole or in part. Drawing on those examples, several experts were of the view that consideration should be given to providing in treaties and domestic legislation for a process of transferring or extraditing nationals to a requesting State for trial and returning them to serve their sentence in their State of nationality, for a transfer of proceedings or for doing away with the exception in relation to serious offences. Similarly, in case of conviction, States could consider adopting a process that would allow the convicted national to serve his or her sentence in the national State. Other alternatives were also suggested. It was also proposed that those concepts could form the subject matter of complementary provisions for the Model Treaty on Extradition and for inclusion in model legislation.

23. The Expert Group explored the various possible bases for extradition, including bilateral treaties, regional, subregional or interregional conventions, multilateral conventions, agreed minutes or non-treaty extradition on the basis of domestic law. Note was taken in that regard of the practice of certain States in developing laws that permitted the adoption of different types of extradition relationships, including those which relaxed normal rules where the requesting State was a near neighbour. There was consensus that States should adopt flexible domestic legislation that would allow for extradition on the basis of the full range of options, including non-treaty extradition. The model legislation on extradition should include provisions for a flexible multi-based extradition process.

24. On a related issue, several experts suggested that the Division should undertake specific projects aimed at the substantial harmonization of extradition laws. The Expert Group noted in particular that harmonization would be beneficial where a group of countries, either regionally or politically linked, agreed to develop harmonized laws and to grant extradition on the basis of those laws. The resulting entrenchment of expectations and certainty in extradition practice provided both a sound and cost-effective method of addressing the problems posed to the global community by a lack of bilateral extradition relationships. The example was given of the recent agreement among the heads of Governments of Pacific Forum countries to achieve harmonization of extradition laws within the region.

25. The requirement for dual criminality, especially in the context of complex criminal activity, such as organized crime or terrorism, could present significant impediments to effective extradition. Because of the fundamental nature of dual criminality in the extradition process, many experts expressed doubt that such a requirement could ever be abolished in extradition practice. It was also noted, however, that within some regional groups of Commonwealth countries agreement had been reached to remove the dual criminality requirement.

26. There was agreement that several steps could be taken to reduce the problems surrounding the dual criminality analysis. Specifically, the replacement of the list approach, with the general conduct test and minimal punishment and other provisions, found in the Model Treaty on Extradition and the commentary thereto, were advanced as means by which the approach to dual criminality issues could be simplified. It was noted that this was an area where technical assistance to train prosecutors and judicial officials, with respect to the appropriate considerations for dual criminality and the general differences in laws, would be helpful. It was also noted that treaties could be very well written, but would be operationally only as effective as those who administered them.

27. There was specific discussion of the problems of dual criminality relating to complex crimes, in particular crimes of participation in criminal organizations. The necessity for a modern approach focused on underlying conduct, as opposed to the terminology used in particular legal systems, was again emphasized.

28. The Expert Group then considered human rights issues in the context of extradition. Some specific questions such as the rule of speciality were discussed. Consideration was given to the question whether the consent of the individual should be preserved in the same manner as the consent of the requested State. There was general consensus that the consent of the individual as a requirement would create significant practical problems and further complicate the issue of speciality. While some experts suggested that the rule of speciality should be abolished altogether, the consensus was that an appropriate balance had been achieved in the current model treaty

- requested State consent - and that should be retained. There was also, however, general agreement that consideration should be given to a complementary provision in the Model Treaty along the lines of the recent Convention Relating to Extradition between the Member States of the European Union, which would allow the fugitive to waive the rule of speciality protection.

29. There was also more general consideration of the issue of human rights and law enforcement. It was recognized that the enforcement of criminal law, both at the national and international level, must be consistent with human rights requirements. The protection of human rights should not be considered inconsistent with effective international cooperation in criminal matters, as adherence to the rule of law and enhanced respect for human rights in the context of the administration of justice within States could result in more effective cooperation. The question was also raised, by some experts, whether the current specific articles relating to human rights in the Model Treaty would be sufficient for future bilateral treaties. It was suggested that there might ultimately be a need for a more general article setting forth a ground for refusal when the return of the fugitive would violate the obligations of the requested State under any treaty for the protection of human rights to which it was a party or under customary international law.

30. It was also noted that some frivolous claims of human rights violations could be raised by the fugitive to delay or defeat the extradition process. In other cases, the politicization of human rights claims was used for a similar purpose.

31. The problems associated with the issue of prescription and lapse of time were discussed. It was noted that traditionally, as captured in the Model Treaty, prescription arising in either the requested or requesting State could constitute a ground for refusal of extradition. The conceptual and practical problems associated with according status to the prescription law of the requested State were highlighted. Because of those problems, it appeared that there was and should be an evolution towards limiting the assessment of lapse of time to the law of the requesting State. As an interim step, however, consideration should be given to allowing the acts of interruption provided for in the law of the requesting State to be recognized in the requested State. It was suggested that the Model Treaty should be considered with a view to incorporating those two ideas as options in relation to the issue of lapse of time.

32. There was a general discussion of the problems in extradition practice resulting from the varying policies of States in relation to the death penalty and the position adopted by States on extradition for capital offences. Many diverse views were expressed. Several experts noted that the practice of denying extradition in cases involving the death penalty posed significant obstacles to effective extradition and to the negotiation of extradition treaties. The necessity to find workable solutions to this problem was highlighted. There was general consensus that the relevant article of the Model Treaty reflected an appropriate balance and compromise, and that it should be retained. There was also general support, however, for the proposition that the option of prosecution in the requested State, in the case of denial of extradition because of the death penalty, should be strengthened.

33. The problem of delay in responding to and executing requests for extradition was also raised. It was noted that substantial delays could be encountered in extradition practice, and that they could significantly impede effective extradition and contribute to human rights concerns. The importance of reducing unnecessary delay was stressed.

34. The Expert Group recommended that the present report, including the recommendations of the Meeting, together with the United Nations model treaties on international cooperation in criminal matters, should be submitted to the Preparatory Committee for the Establishment of the International Criminal Court for consideration in its deliberations on relevant issues.

Appendix

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United Nations Secretariat

United Nations International Drug Control Programme

United Nations institutes

United Nations Interregional Crime and Justice Research Institute

Affiliated regional institutes and associated institutes

Arab Security Studies and Training Centre

Intergovernmental organizations

Commonwealth Secretariat, Council of Europe, International Criminal Police Organization